

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: SB 538

SPONSOR: Senator Smith

SUBJECT: Sentencing Proceeding for Capital Cases - Victim Impact Evidence

DATE: March 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 538 clarifies the current authority of the State to introduce and subsequently argue victim impact evidence to the jury during the sentencing phase of a capital trial, once the State has provided evidence of the existence of one or more aggravating circumstances.

This bill substantially amends section 921.141, Florida Statutes.

II. Present Situation:

Capital Case Sentencing Proceedings

In Florida, in capital felony trials, proceedings are bifurcated, such that the guilt or innocence phase is separate from the sentencing phase. Typically, the trial jury is the same jury that recommends sentencing to the court, unless the trial jury has been waived. s. 921.141(1), F.S.

Section 921.141(1), F.S., sets forth the proceedings for the determination of a life or death sentence in capital cases as follows:

In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6).

The following situations or factors in existence during a capital felony can be considered aggravated circumstances:

- Where the capital felony is committed:
 - By a felon while under a sentence of imprisonment, or on community control or felony probation;
 - While the defendant was engaged or an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, robbery, sexual battery, aggravated child abuse; abuse of vulnerable persons resulting in great bodily harm, permanent disability or disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb;
 - To avoid or prevent a lawful arrest or during an escape;
 - For financial gain;
 - To disrupt or hinder lawful exercise of any governmental function or enforcement of laws;
 - By a criminal street gang member;
 - By a defendant who had a previous conviction for another capital felony or a felony involving use or threat of violence; or
 - By a defendant who knowingly created a great risk of death for many persons; or
- The capital felony itself:
 - Was especially heinous, atrocious, or cruel; or
 - Was a cold, calculated, or premeditated homicide without moral or legal justification; or
- The victim was:
 - A law enforcement officer engaged in performance of duties;
 - A public official engaged in performance of duties;
 - A person under 12 years old; or
 - Particularly vulnerable due to age, disability, or because the defendant was in a position of familial or custodial authority over the victim.
s. 921.141(5), F.S.

Mitigating circumstances include the following:

- Defendant has no significant history of prior criminal activity;
- Capital felony was committed while under extreme mental or emotional disturbance;
- Victim participated in or consented to defendant's conduct;
- Defendant was an accomplice with relatively minor participation;
- Defendant was under extreme duress or substantial domination of another person;
- Defendant's capacity to appreciate criminality of conduct or conform conduct to requirements of law was substantially impaired;
- Defendant's age at time of offense; and
- Existence of any other factors in defendant's background that would mitigate against imposition of death penalty. s. 921.141(6), F.S.

After hearing the evidence and argument by counsel, the jury (unless the jury is waived by the defendant) then makes a sentencing recommendation to the court of either life or death. The recommendation is decided by a majority vote. s. 21.141(2) and (3), F.S.

The jury's advisory sentence must be based on the following:

- Whether sufficient aggravating circumstances exist as statutorily enumerated;
- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment or death. s. 921.141(2), F.S.

The judge may or may not follow the recommendation of the jury. After weighing aggravating and mitigating circumstances presented, the court is required to enter a sentence of life imprisonment or death, but if the court imposes a death sentence, it must provide written findings upon which the sentence is based as to the facts:

- That sufficient aggravating circumstances exist as statutorily enumerated, and
- That there are insufficient mitigating circumstances to outweigh the aggravating circumstances. s. 921.141(3), F.S.

Victim Impact Evidence in Capital Cases

Subsection (7) of s. 921.141, F.S., states:

Once the prosecution has provided evidence of the existence of one or more aggravating circumstances ... the prosecution may introduce, and subsequently argue, victim impact evidence ... designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted

This particular subsection was enacted by the Legislature in 1992, subsequent to the U.S. Supreme Court decision in *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597 (1991).

Case Law on Victim Impact Evidence in Capital Cases

In 1991 the U.S. Supreme Court reversed its holdings in two previous cases. In 1987, in *Booth v. Maryland*, 482 U.S. 496, 509, 107 S. Ct. 2529 (1987), the Court ruled that the Eighth Amendment of the Federal Constitution barred the admission and argument of victim impact evidence during the penalty phase of capital trials, as victim impact evidence is not related to the harm caused and the defendant's blameworthiness. Due to the nature of the information provided in a victim impact statement, the Court held, the risk that the sentencing decision is arrived at arbitrarily is impermissible. *Id.* at 505. Additionally, evidence that a victim is a sterling member of the community does not justify a lack of consideration for those victims of lesser community

value. *Id.* at 506. *South Carolina v. Gathers*, 490 U.S. 805, 109 S. Ct. 2207 (1989), reached a similar finding.

In 1991 the *Payne* Court reconsidered that precedent, stating:

We are now of the view that a State may properly conclude that for the jury to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before it at the sentencing phase evidence of the specific harm caused by the defendant. *Payne*, 501 U.S. at 825.

And further, quoting Justice White's dissent in *Booth*:

"The State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family." *Payne*, 501 U.S. at 825, quoting *Booth*, 482 U.S. at 517.

The *Payne* court similarly cited the dissent in *Gathers*:

By turning the victim into a "faceless stranger at the penalty phase of a capital trial," *Gathers*, 490 U.S., at 821, 109 S.Ct. at 2216 (O'Connor, J., dissenting), *Booth* deprives the State of the full moral force of its evidence and may prevent the jury from having before it all the information necessary to determine the proper punishment for a first-degree murder. *Payne*, 501 U.S. at 825.

It should be noted that the Court refers to the *Payne*, *Booth*, and *Gathers* juries as the "sentencing jury," indicating that the jury hearing the evidence and argument at the sentencing phase of the trial actually decided the appropriate sentence, unlike in Florida where the jury makes a sentencing recommendation to the judge who ultimately decides the sentence.

In two recent Florida cases, convicted capital defendants objected to the admission and argument of victim impact evidence. In both cases, the Florida Supreme Court declined to vacate the death sentence. In *Kearse v. State*, 770 So.2d 1119 (Fla. 2000), the defendant challenged a special jury instruction designed to explain to the jury that victim impact evidence was not to be considered as an aggravating circumstance. The defendant alleged that in giving this instruction, the court created undue influence, causing the jury to overemphasize victim impact evidence in their deliberations. *Id.* at 1132. The Florida Supreme Court found that the trial court did not err in giving the instruction. *Id.* at 1133.

In *Card v. State*, 803 So.2d 613 (Fla. 2001), defense counsel objected to the prosecutor's argument in which it appears that he was about to explain the "weight" to be given the victim impact evidence presented. The trial court denied a defense motion for mistrial, and directed the prosecutor not to imply that the jurors should "weigh" victim impact evidence. The Florida Supreme Court found no abuse of the trial court's discretion. The Court, however, stated in a footnote: "Victim impact evidence is not listed as an aggravating circumstance under

s 921.141(5), F.S., that may be *considered* and weighed by juries.” *Id.* at 622 (emphasis added). This comment may lead to confusion at the trial court level as to whether juries in Florida capital cases can consider victim impact evidence *at all*.

III. Effect of Proposed Changes:

This bill clarifies that the State may not only introduce victim impact evidence during the sentencing phase of a capital trial, but may also argue it to the jury.

This bill takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
